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FEDERAL COMMUNICATIONS COMMISSION
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February 19, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222, SC-1170
Washington, DC 20554

RE: CC Docket No. 96-115, Telecommunications Carriers' Use of Customer
Proprietary Network Information and Other Customer Information
CC Docket No. 96-149, Implementation of the Non-Accounting Safeguards of
Sections 271 and 272 of the Communications Act of 1934, as amended
WT Docket No. 96-162, Amendment of the Commission's Rules to Establish
Competitive Service Safeguards for Local Exchange Carrier Provision of
Commercial Mobile Radio Services

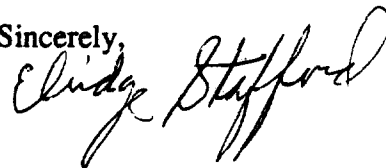
Dear Mr. Caton:

Representatives of U S WEST met today with A. Richard Metzger, Deputy Bureau Chief, Common Carrier Bureau and William Kehoe, Special Counsel, Policy and Program Planning Division, Common Carrier Bureau, to discuss the above-referenced proceedings. U S WEST was represented by Kathryn Krause, Senior Attorney; Cyndie Eby, Executive Director, Federal Regulatory and the undersigned. The points that were discussed at this meeting are covered in the attached material.

In accordance with Section 1.1206(a)(2) of the Commission's Rules, the original and one copy of this letter, with attachment, are being filed with your office for inclusion in the public record for the above-mentioned proceedings. Acknowledgment of date of receipt of this transmittal is requested. A duplicate of this letter is provided for this purpose.

Please contact me if you have any questions.

Sincerely,



Attachment

cc: Mr. A. Richard Metzger
Mr. William Kehoe
Ms. Karen Brinkmann

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Ex Parte Presentation

CC Docket No. 96-115

CC Docket No. 96-149

WT Docket No. 96-162

CPNI/SLI Rules That Serve the Public Interest

February 19, 1997

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U S WEST Privacy Profile

- Worked with Information Industry Liaison Committee (IILC) on initial roll-out of Calling Party Number where many privacy issues were addressed in context of information restriction versus access. U S WEST first company to stress value of access to information.
- Internal Company work on information privacy and access issues.
- Member of Information Industry Association (IIA) and Chair of the Privacy and Information Regulation Committee.
- Member of United States Council for International Business (USCIB) and participant on Information Policy Committee.
- Founding Grantor of *Privacy & American Business*, organization founded and run by Alan Westin and Robert Bellare. Created with purpose of providing a "quality" component to privacy discussion through the provision of demonstrable "facts and data."
- In 1994-95, member of Center for Democracy and Technology (CDT) Privacy Forum, which convened business, public policy and privacy advocates to address privacy issues; also member of Digital Privacy and Security Working Group.
- Active participant in National Telecommunications and Information Administration (NTIA) proceedings on privacy; recent contributor of paper on privacy in response to NTIA "call for papers."
- Participant in National Information Infrastructure Task Force (NIITF) and Advisory Committee privacy activities (primarily through associations).
- Member of Direct Marketing Association (DMA), which has a Privacy Committee.
- Met with and participated on panels at Federal Trade Commission (FTC) and Federal Reserve Board regarding privacy issues.

Summary

- The Relationship Is Key.
- There Are Clear Public Benefits From a Carrier's Usage of Its CPNI.
- Customers Expect One-Stop Shopping.
- If Approval is Not Implied, Approval Process Should Be Flexible.
- An Affirmative Customer Authorization Is Not in the Public Interest.
- One Set of CPNI Rules Should Apply to All Carriers.
- The Market Should Drive Subscriber List Information Offerings.

The Relationship is Key

- The critical factor is not whether there is a choice of supplier, but that there is a relationship between the customer and the existing supplier--
 - that should be accommodated and respected;
 - that has factual and relational consequences (*Privacy & Legislative Associates Report* at 5-6 (“personal information customarily arises out of transactions or events which occur in a relationship”).
- The FCC has recognized that customers in existing business relationships have little or no privacy concerns within those relationships.
 - “...a solicitation to someone with whom a prior business relationship exists does not adversely affect subscriber privacy interests.” TCPA Proceeding, CC Docket No. 92-90, 10/16/92, para. 34.
 - “...we find that a consumer’s established business relationship with one company may also extend to the company’s affiliates and subsidiaries.” TCPA Proceeding, CC Docket No. 92-90, 10/16/92, para. 34.

The Relationship is Key, cont'd

- Both historically and continuing to this day, telephone companies have been identified as institutions protective and responsible with regard to customer data.
 - U S WEST 1991 Comments, CC Docket No. 90-623, fns 222-223, citing to various surveys done beginning in 1979 and to internal company focus group work;
 - Recent *ex parte* submission by Pacific Telesis supports this “trusted position” aspect of customers’ relationships with their telephone company (77% of those polled had high and medium trust regarding the use and protection of their information by local telephone companies; Pacific Telesis Survey, question 5);
 - U S WEST advises its customers *via* the Call Guide Section of the White Pages telephone directories that customers’ privacy is important and their records are “fully protected.” (U S WEST 1994 Comments, CC Docket Nos. 90-623/92-256, paras. 19-20.)

The Relationship is Key, cont'd

- Customers do not experience anxiety about privacy when a business uses its own customer data for multiple purposes or shares the data with its affiliates. (Louis Harris & Assoc. 1994 Study, U S WEST 1994 Comments, CC Docket Nos. 90-623/92-256, fns 30-31.) As to multi-purpose uses, this was recently confirmed by the survey data submitted by Pacific Telesis.
- Customers expect businesses with whom they have relationships to be knowledgeable about them and to communicate with them. This was recently confirmed by the Pacific Telesis survey data (64% of respondents want to hear about a variety of services, ranging from telecommunications to cable to interactive services and agree that using CPNI to target these communications is acceptable to them; 69% find contemporaneous CPNI look-ups for purposes of this communication acceptable. Pacific Telesis Survey, questions 9-11).
- Even U S WEST's nonpublished and nonlisted customers (those generally thought to be at the apex of privacy sensitivity) have indicated their awareness of the importance of personal information to a business, are quite comfortable with uses they have agreed to either directly or by implied consent, and have indicated that they have no problem with U S WEST contacting them about products and services, through either direct marketing or telemarketing. (U S WEST 1994 Comments, CC Docket Nos. 90-623/92-256, pages 10-11.)

Information Sharing With Affiliates is Appropriate

- As recently re-iterated by *Privacy & Legislative Associates* at 16-18, information sharing among affiliates is not uncommon in other industries and was recently legislatively approved with respect to certain types of information.
- Congress recently enacted legislation allowing for the sharing of "experience" information in a credit environment across affiliated companies and preempted states from ruling to the contrary for at least five years. Consumer Credit Reporting Reform Act Sections 2402(e) and 2419(2).
- Common Carrier Bureau (CCB) allowed sharing of CPNI between AT&T's communications business and its banking affiliate (8 FCC Rcd 8782 (1993)).



CPNI CAN BE SHARED WITH A SECTION 272 AFFILIATE AND NOT OTHERS WITHOUT VIOLATING SECTIONS 222 OR 272(C)(1)

- Section 222 outlines the legislative scheme for CPNI use and distribution. It should be considered the "exclusive" provision with respect to "information" that is also CPNI.
 - Based either on the nature of the relationship or pursuant to customer "approval," CPNI can be shared with affiliate companies including a Section 272 subsidiary.
 - Such sharing can be exclusive to Section 272 subsidiary in support of 272(g)(3) joint marketing and sales activities. The FCC has repeatedly found an integral connection between the use of CPNI and successful joint marketing. (See U S WEST Comments, CC Docket No. 96-115, Appendix A (attached for easy reference)).
 - When used for such activities, CPNI avoids the non-discrimination mandates of Section 272(c)(1) pertaining to other types of information.
 - Congressional mandates do not compel a company sharing CPNI with a Section 272 subsidiary to also make CPNI available to unaffiliated third parties. As the FCC has stated, "Congress sought to address both privacy and competitive concerns by enacting Section 222." NPRM, CC Docket No. 96-115, para. 15. It is most unlikely that Congress meant to address "competitive" issues in two places with potentially contradictory approaches and outcomes.



There Are Clear Public Benefits From A Carrier's Use Of Its CPNI

- Regulations that complicate the relationship between customers and a business add unwarranted inefficiencies to the delivery of services and to the introduction of new services.
- A carrier's use of its CPNI furthers the Commission's goal of market expansion for existing and new products and advances customer marketplace choices.
- A carrier's ability to use its CPNI:
 - allows for focused product development based on the record of customer choices and prior experience with the customer,
 - enables a carrier to acknowledge the existing relationship with its customers and their product choices,
 - optimizes one-stop shopping for customers,
 - enables educated target marketing.



Customers Expect One-Stop Shopping

- Customers benefit by carriers maximizing their resources, including their CPNI, to bring innovative, quality products to market as solutions to customers' needs. Examples include new wireless or long distance service offerings, or bundled offerings, (e.g., wireless with voice messaging service, or long distance with local service).
- Wireless is one of the products that customers want to hear about from a single telecommunications provider. (AT&T/McCaw Orders, 9 FCC Rcd 5836 (1994); 10 FCC Rcd 11786 (1995)). This was recently confirmed by the Pacific Telesis Survey Data (question 9).
- U S WEST plans to meet customers' expectations by offering, on 10 MHz licenses, a wireless option that is customer friendly (e.g., identical access to features, one bill, and dial tone just like wireline) that can be purchased along with other telecommunications products.
- CPNI rules should not be structured to hinder the ability of customers to obtain a full range of products and services from U S WEST or any other telecommunications provider. Given that over two-thirds of consumers have expressed an "interest" in being informed about such offerings (Pacific Telesis Survey, question 9), CPNI rules that frustrated that communication and exchange of information would frustrate customer expectations and quality service delivery.



If Approval Is Not Implied, Approval Process Should be Flexible

- Customer approval should be implied from the existing business relationship.
- Carriers should have flexibility in the way they seek and secure customer approval and the extent of the approval requested.
- Both oral approval and notice with opt-out should be permitted.
- Approval should be permitted to be sought both for telecommunications carriers and affiliates, including those offering non-telephony services.
- Each telecommunications carrier must have flexibility to craft its message in a manner that relates best to the customers it serves.
- Any interim CPNI restrictions (for example, pending any necessary customer "approval") should be -- at most -- use not access restrictions.



An Affirmative Customer Authorization Is Not in the Public Interest

- Requiring an American business to obtain affirmative customer authorization to be able to use its commercial information is unprecedented, except for the limited ONA requirement regarding customers having more than 20 lines (1991 Order, CC Docket No. 90-623).
- The FCC has acknowledged that affirmative customer authorization would be extremely difficult to secure -- especially with respect to mass market customers. (FCC 1994 Public Notice, 9 FCC Rcd 1685, and CI-III Remand Order, 6 FCC Rcd at 7610, fn 155 (1991).)
- Companies that have brought a quality process approach to this issue (i.e., the provision of "facts and data") are primarily local exchange carriers (USW filings reciting to pre-1996 survey data and focus groups; Cincinnati Bell citing to survey information; Pacific Telesis with recent survey data and legislative analysis material).

An Affirmative Customer Authorization Is Not in the Public Interest, cont'd

- There is no clear indication that Congress meant the FCC to require affirmative customer authorization. Without such clarity, it should not be assumed to be Congressional intent.
- Section 222(c)(2) is merely a statutory incorporation of prior FCC CPE/Enhanced Services rules that require LECs to provide CPNI to third parties when requested to do so by a customer.
- Cable Act utilizes a “notification” model and the same model should apply to telecommunications companies.
 - Language of the statutory sections is similar (USW Comments, CC Docket 96-115 at 7 to 10).
 - Model developed by Congress for privacy protection within an “existing business relationship” and with respect to a business relationship with even less pre-existing trust than telecommunications companies (Pacific Telesis Survey, showing cable companies in “second tier” of relationships *vis-a-vis* trust factor).

An Affirmative Customer Authorization Is Not in the Public Interest, cont'd

- NIITF Privacy Working Group and NTIA both endorse an “opt out” approach, particularly for “non-sensitive” information.
 - Report of the Privacy Working Group; October, 1995 at 8.
 - NTIA Privacy Report; October, 1995 at Section III.B.
- Recent Pacific Telesis Survey data supports public acceptance of an “opt out” model with respect to telecommunications information.
 - The trusted nature of the communication between service provider and customer strongly argues against an opt-in approach.
 - CPNI is not particularly “sensitive” information.
 - While communications about new products and services is generally acceptable to a large portion of the public (88%), when an opt-out procedure is offered, the acceptability to receiving business communications rises to 93%.
- U S WEST’s experience with ONA affirmative authorization requirement:
 - Inaction causes a customer’s account to be restricted contrary to actual customer intent,
 - Delays responding to customers and providing service,
 - Frustrates and annoys customers when the carrier representative has no access to, or knowledge of, the specific information associated with the existing business relationship.

One Set of CPNI Rules Should Apply to All Carriers

- Based on statutory language, the same rules should apply to all telecommunications carriers.
- Based on the statutory goal of privacy protection and total industry application, existing ONA/CPE CPNI rules should be either eliminated or applied to all telecommunications carriers equally.
- Unequal application of CPNI rules does nothing to advance customer privacy interests and would operate to burden individual competitors rather than advance competition.
- Different rules, for different carriers, for different products, will make the customer approval process confusing, complicated, time consuming, and costly.

The Market Should Drive Subscriber List Information Offerings

- The statute is self-explanatory:
 - minimal market problems,
 - no need for detailed rules and regulations.
- The FCC should not dictate a one-size-fits-all approach.
- The statute requires that SLI be provided at reasonable rates. Incremental cost is neither necessary nor appropriate.
- LECs should be required to provide primary advertising classifications only if they offer such classifications.
- Multiple uses should be permitted at carrier's discretion.

The Market Should Drive
Subscriber List Information Offerings, cont'd

- A LEC should provide the same SLI to non-affiliated directory publishers that it provides to the directory publishing operation that publishes its directory listings:
 - same elements,
 - same format,
 - same price.
- Promulgating a set number of elements and price structures hinders market influences.
- The FCC has very little information on what current SLI offerings contain. To avoid disruption of existing SLI-dependent businesses (e.g., suppliers and purchasers), the FCC should not make decisions on SLI content without full understanding of the existing market and offerings.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

S+K
JUN 11 1996

In the Matter of)

Implementation of the)
Telecommunications Act of 1996:)

Telecommunications Carriers' Use)
of Customer Proprietary Network)
Information and Other Customer)
Information)

CC Docket No. 96-115

U.S. WEST, INC.'S OPENING COMMENTS

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Of Counsel,
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June 11, 1996

APPENDIX A

Customers want one-stop shopping

BOC CPE Relief Order, 2 FCC Rcd. 143, 147-48 ¶¶ 29, 31 (1987). "These requirements also prevent the BOCs from satisfactorily serving customers that desire integrated telecommunications systems solutions and designs. The polls and surveys conducted . . . on this issue . . . indicate that a broad spectrum of communications users desire vendors that can be single sources for telecommunications products. . . . We see substantial benefits for users in permitting the BOCs to respond to marketplace demands by organizing their CPE and basic service operations in the most efficient way to satisfy their customers' needs."

Phase I NPRM, 50 Fed. Reg. 33581, 33582 n.58 (1985) ("Subscribers desire [] one stop shopping.")

McCaw/AT&T Transfer of Control Recon. Order, 10 FCC Rcd. 11786, 11795-96 ¶¶ 15-16 (1995). "We believe that the benefits to consumers of 'one-stop shopping' are substantial . . . The ability of a customer, especially a customer who has little or infrequent contact with service providers, to have one point of contact with a provider of multiple services is efficient and avoids the customer confusion that would result from having to contact various departments within an integrated, multi-service telecommunications company . . . 'One-stop shopping' promotes efficiency and avoids consumer confusion."

Compare AT&T CPE Relief MO&O and NPRM, 102 FCC 2d 627, 639-40 ¶ 23 (1985) ("It prevents the public from dealing with a single vendor for both network service and CPE needs.")

AT&T CPE Relief Order, 102 FCC 2d 655, 693 ¶ 64 (1985) ("To prohibit AT&T from offering a single point of contact would eliminate one of the benefits to AT&T of removing structural separation, and we are unwilling to so limit the relief we are granting in this Order.")

McCaw/AT&T Transfer of Control Order, 9 FCC Rcd. 5836, 5886 ¶ 83 (1994) ("We reject the suggestion . . . that we prohibit AT&T from disclosing its customers' CPNI to McCaw, because such a prohibition would undercut one of the benefits of the AT&T/McCaw combination: the ability . . . to offer its customers the ability to engage in 'one stop shopping' for their telecommunications needs.")

SBC Communications, Inc. et al. v. FCC, 56 F.3d 1484, 1494 (1995) ("The Commission refused to impose that limitation [prohibiting AT&T from disclosing CPNI to McCaw] because it regards AT&T/McCaw's ability to offer one-stop shopping for all of a customer's telecommunications needs as one of the benefits to the public resulting from the merger. . . . We agree with the Commission . . . that . . . the intensified price and service competition that follows is . . . a clear public benefit.")

1991 USWC Comments, Appendix B at 3.

Restriction of CPNI is a form of passive structural separation

Phase II Recon. Order, 3 FCC Rcd. at 1173 n. 83 "A prior authorization approach would result in the imposition of a limited, but significant, form of structural separation between a BOC's enhanced service and network services operations pending a customer's CPNI authorization. We have repeatedly recognized that structural separation rules deny customers the efficiencies and other benefits that integrated operations can provide." (emphasis added; footnotes omitted)

Phase I Order, 104 FCC 2d at 1088 ¶ 258, restrictions on the use of customer information "impose a burden on all contacts between carriers and their customers. . . . substantially increase the difficulties attendant with providing customers a single point of contact, and prove extremely expensive to implement;" 1089 ¶ 260.

APPENDIX A

AT&T CPE Relief Order, 102 FCC 2d at 692-93 ¶ 64, noting that to deprive AT&T of CPNI access/use would deprive it of the ability to offer one-stop shopping and would eliminate one of the fundamental consumer benefits associated with integration and access to such information.

AT&T CPE Relief Recon. Order, 104 FCC 2d at 755 ¶ 50.

Structural Separation is not in the public interest

AT&T CPE Relief NPRM, 102 FCC 2d at 640 ¶ 23. BOC CPE Relief Order, 2 FCC Rcd. at 148 ¶ 29 and n.86. Structural separation prevents the public from dealing with a single vendor.

AT&T CPE Relief Order, 102 FCC 2d at 678 ¶ 38; BOC CPE Relief Order, 2 FCC Rcd. at 147 ¶ 29. Structural separation prevents customers from securing integrated systems solutions, which they desire.

AT&T CPE Relief Order, 102 FCC 2d at 678-79 ¶ 39; BOC CPE Relief Order, 2 FCC Rcd. at 147 ¶ 29. Structural separation results in higher prices to consumers and a reduction in the quality and variety of services available to the public, due to an inhibition of research, development, and innovation.

Phase I Order, 104 FCC 2d at 1003-04 ¶¶ 80-81 (noting that structural separation has an even more significant impact on the development of enhanced services than CPE), 1008 ¶¶ 89-91.

Prior Authorizations are not in the public interest

1994 Public Notice, 9 FCC Rcd. 1685 (1994). "[T]he Commission concluded that a prior authorization rule would as a practical matter deny to all but the largest business customers the one-stop-shopping benefits of integrated marketing of basic and enhanced services by BOCs."

Computer II Remand Order, 6 FCC Rcd. 7571, 7610 n.155 (1991). "Applying a prior authorization rule for other than the largest customers likely would require a BOC to establish separate enhanced and basic service marketing forces for those customers. . . . Under a prior authorization rule, a large majority of mass market customers are likely to have their CPNI restricted through inaction, and in order to serve them the BOCs would have to staff their business offices with network-services-only representatives, and establish separate marketing and sales forces for enhanced services. Thus, a prior authorization rule would vitiate a BOC's ability to achieve efficiencies through integrated marketing to smaller customers -- one of the benefits sought through adoption of nonstructural safeguards rather than structural separation."

See, e.g., Phase II Order, 2 FCC Rcd. 3072, 3094 ¶ 153, 3116 n.300; Phase II Recon. Order, 3 FCC Rcd. at 1162 ¶ 96.

AT&T/MCI Order, 7 FCC Rcd. at 1045 ¶ 44. "Carriers have had little success in having customers return the LOA and it tends to discourage competition."

Bureau Waiver Order, 101 FCC 2d at 942 ¶ 21. "We recognize, however, that end users who make a verbal commitment to use a carrier's service may not return signed authorizations promptly." (In this Order, the Bureau changed the Commission's absolute requirement that carriers have written LOAs in their possession, as a part of the presubscription process.) See also 1985 FCC Waiver Order, 102 FCC 2d 503, 506 ¶ 6 (1985).